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Gotterdammerung

Lawrence G. Baxter

GÖTTERDÄMMERUNG

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In his panel remarks on the future direction of financial regulation after the 2012 elections, Lawrence Baxter argues that the age of large banks and "too big to fail" is destined to come to an end, but not through the traditional avenue of governmental oversight. Baxter starts by detailing the warning signs that illuminate the unsustainable nature of the current financial model and moves to a discussion on the deficiencies of modern banking regulations. Some hope for an end to giant banking behemoths, Baxter finally posits, lies in stricter market discipline and a realization that smaller, less-complex banks provide returns that larger banks simply cannot match. It follows that free-market principles will likely do more to reign in the size of banks than regulation.

My eight-year-old son is named after an ancient Irish king. He and I enjoy imagining the great adventures and heroism of ancient and SciFi mythology—*Lord of the Rings*, *Star Wars*, *King Arthur and the Knights of the Roundtable*, and the *Ring of the Niberlungen*. We like to celebrate his diverse European ancestry, from which so many of these legends are descended. One of his ancestral names is Volker. So with particular delight—and not without some little alarm on his part—we discovered that he can now trace his ancestry into the swirling mists of such mythical characters as Volker the Strong, one of Siegfried's dragon slayers. Those familiar with Wagner's cycle of four operas will understand, therefore, why, when I think of the future of big banking, I am drawn to the name of the last of those four operas, entitled *Götterdämmerung*, or *Twilight of the Gods*.

Various developments suggest to me that the era of banking behemoths may be drawing to a close. The long running battle over whether the banks are "too big to fail," "too big to manage," "too complex to regulate," and "too big to jail" has not receded. Far from it,

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the debate has marshaled powerful and well-informed individuals on both sides of the issues and on both sides of the Atlantic (and in *THE ATLANTIC*![1]). It is not a debate that will be settled soon, for there is a complicated case to be made on both sides.[2] Nevertheless, there also appear to be signs that might portend some resolution and a slow twilight of the era of large universal banking. I am hopeful that the most important of these indications is coming from the markets themselves.

I. THE WARNING SIGNS

The full costs incurred by the large banks in the run-up to the Crisis are now becoming evident as one scandal after another emerges. Major banks (Deutsche and Barclays) are charged with having concealed their financial conditions in 2008 to avoid government intervention.[3] News of huge penalties for improper behavior far more widespread than the occasional rogue trader—rate rigging, market manipulation, facilitating money laundering, and tax evasion being the most prominent examples—are almost a daily event.[4] Big banks have

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1. *See* Frank Partnoy & Jesse Eisinger, *What's Inside America's Banks?*, THE ATLANTIC, Jan./Feb. 2013, *available at* http://www.theatlantic.com/magazine/archive/2013/01/whats-inside-americas-banks/309196/.

2. Lawrence G. Baxter, *Betting Big: Value, Caution and Accountability in an Era of Large Banks and Complex Finance*, 31 REV. BANKING & FIN. L. 765 (2012).

3. *See, e.g.*, David Jolly, *German Authorities Are Said to Investigate Deutsche Bank*, N.Y. TIMES DEALBOOK (Apr. 4, 2013, 6:18 AM), *available at* http://dealbook.nytimes.com/2013/04/04/german-authorities-are-said-to-investigate-deutsche-bank/ (Deutsche Bank); Tom Braithwaite, Kara Scannell & Michael Mackenzie, *Deutsche Hid Up To $12 Billion Losses, Say Staff*, FIN. TIMES Dec. 5, 2012, *available at* http://www.ft.com/intl/cms/s/0/f03eb1d6-3efd-11e2-a095-00144feabdc0.html; Daniel Schäfer & Caroline Binham, *Barclays in Qatar Loan Probe*, FIN. TIMES, Jan. 31, 2013, *available at* http://www.ft.com/intl/cms/s/0/47d412ce-6bd1-11e2-a700-00144feab49a.html#axzz2JZ8zTwBF (investigation into whether Barclays disguised a loan to Qatar in order to facilitate the latter's equity investment in Barclays for the purpose of disguising Barclays' capital position).

4. *See, e.g.*, *The LIBOR Scandal: The Rotten Heart of Finance*, THE ECONOMIST, July 7, 2012, *available at* http://www.economist.com/node/21558281; Andrew Harris & Joe Richter, *Goldman Sachs, London Exchange Sued Over Aluminum Supply*, BLOOMBERG, Aug. 3, 2013, http://www.bloomberg.com/news/2013-08-02/goldman-sachs-london-exchange-sued-over-aluminum-supply-1-.html; Carrick Mollencamp et al., *Special Report: Documents Allege HSBC Money-Laundering Lapses*, REUTERS, May 3, 2012, *available at* http://www.reuters.com/article/2012/05/03/us-hsbcusa-probes-idUSBRE8420FX20120503; Robert W. Wood, *FATCA Cliff: Tax Evasion Guilty Plea and Death for Oldest Swiss Bank*, FORBES, Jan. 3, 2013, *available at* http://www.forbes.com/sites/robertwood/2013/01/03/global-banking-cliff-fatca-irs-guilty-plea-and-death-for-oldest-swiss-bank/.

paid billions of dollars in quasi-criminal penalties and lawsuit settlements. Even after reaching these settlements, the banks still have not realized the end of their liabilities: big banks still face, for example, continuing large class-action suits related to the foreclosure mess and the fallout from Libor interest rate rigging.[5]

Perhaps most importantly, more concrete calculations for assessing the degree of public subsidy large banks enjoy have been published and are being used in congressional hearings with powerful effect.[6] Although the industry and even an undersecretary at Treasury have denied that such subsidies exist or are significant,[7] their reasoning has been either nonexistent or unpersuasive.

A combination of factors, particularly financial (to be addressed more fully below), makes for difficult times for large financial institutions. Even as bankers profess confidence in their ability to weather the storms, a number of possibilities could precipitate the sudden collapse of one or more big banks.[8] As we have seen, that supposed paragon of risk management, JP Morgan Chase & Co., found itself in choppy waters as a result of aggressive trading activity by its "London Whale" group in London.[9] This has left many wondering what

5. *See, e.g.*, Consent Judgment, United States of America v. Bank of America Corp., Case 1:12-cv-00361-RMC (D.D.C. Apr. 5, 2012) (national foreclosure settlement); Complaint, Adams v. Bank of America Corp., Case 12-cv-07461-UA (S.D.N.Y. Oct. 4, 2012) (LIBOR class action).

6. *See, e.g.*, Kenichi Ueda and Beatrice Weder di Mauro, *Quantifying Structural Subsidy Values for Systemically Important Financial Institutions,* 37 J. BANKING & FIN. 3830 (2013) (estimating the structural value of government subsidy by exploiting expectations of state support embedded in credit ratings).

7. Mary John Miller, Under Secretary of the Treasury, Remarks at the Hyman P. Minsky Conference (Apr. 18, 2013) (transcript available at http://graphics8.nytimes.com/packages/pdf/business/Mary-Miller-speech.pdf).

8. The political consequences of such an event is acknowledged by one CEO opposed to large bank breakups: the CEO of Zions Bancorp recently observed that the country's biggest banks are "one major misstep" away from being broken up. *See* Maria Aspan, *Big Banks 'One Major Misstep' Away from Breakup: Zions CEO*, AM. BANKER, Mar. 14, 2013, http://www.americanbanker.com/issues/178_51/big-banks-one-major-misstep-away-from-breakup-1057552-1.html.

9. *See, e.g.*, Dominic Rushe & Jill Treanor, *US Prosecutors Charge Two JP Morgan Traders over 'London Whale' Incident*, THE GUARDIAN, Aug. 14, 2013, http://www.theguardian.com/business/2013/aug/14/us-prosecutors-jpmorgan-traders-london-whale; *see also* HOMELAND SEC. & GOVERNMENTAL AFFAIRS PERMANENT SUBCOMM. ON INVESTIGATIONS, REPORT: JPMORGAN CHASE WHALE TRADES: A CASE HISTORY OF DERIVATIVES RISKS AND ABUSES (MAR. 14, 2013), *available at* http://www.hsgac.senate.gov/download/report-jpmorgan-chase-whale-trades-a-case-history-of-derivatives-risks-and-abuses-march-15-2013.

might have happened to less tightly managed institutions in similar circumstances. It is not surprising, therefore, that observers are asking whether we can safely assume that large modern banks have become too complex to manage (and regulate).

The late John Medlin, then-CEO of Wachovia, once cautioned me: "you never see the lightning that strikes you."[10] The sheet lightning on the horizon, however, is certainly visible, and I would suggest that a deadly bolt from the blue may well come from the increasingly complex web of technology on which modern banking now relies so heavily. The same technology that has made so real the virtual world of global finance, and levels of service, scale, and risk management undreamt of only three decades ago, also carries with it great and often unexpected dangers.[11]

Last year the subsidiary of a major British bank, The Royal Bank of Scotland, lost its ability to service customers for a lengthy period of time—so much so that its CEO had to forego a large portion of his compensation for the year.[12] This outage was the result of problems in implementing a software upgrade. These kinds of occurrences are far more common than the general public (and even the regulators) often recognize. Indeed, they can occur no matter how much advance planning and testing is undertaken, even in banks with the most sophisticated of technology and operations centers.

Late last year, and repeatedly so far in 2013, major banks have also endured substantial outages resulting from cyber attacks that are probably state-sponsored—so much so that the industry has reversed course from its previously anti-interventionist stance to ask for government help.[13] President Obama has issued an executive order that

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10. John Medlin served as CEO of Wachovia from 1977 to 1993 and as Chairman from 1988 to 1998.

11. Julie L. Williams, *Common Breakdowns in Risk Management*, PROMONTORY SIGHTLINES IN FOCUS, Mar. 4, 2013, *available at* http://www.promontory.com/uploadedFiles/Articles/Insights/Promontory_Sightlines_InFocus_Risk_Management_130304_FINAL.pdf ("Simple, small errors can have outsized consequences if they are repeated frequently enough — witness problems with mortgage-foreclosure documentation. Supervisors have begun to ask whether large banks have other, similar processes for other types of products. Firms with relatively straightforward but high-volume businesses of any sort should be mindful that the marginal risk of each transaction over time can accrete, eventually constituting a messy problem.").

12. *See* Simon Carswell, *Ulster Bank Counts the Cost of Catastrophic IT Meltdown*, IRISH TIMES, Jul. 6, 2012, at 5.

13. *See, e.g.*, Joseph Menn, *Cyber Attacks against Banks More Severe Than Most Realize*, REUTERS, May 18, 2013, *available at*

could have far-reaching impacts on the relationship between private banking organizations and the national security network, and bills addressing this issue have been revived in Congress.[14]

Separately from well-known denial of service attacks on banking web sites, there have also been reports of compromises of customer data that have proved costly to financial institutions. And these are the ones we know about. Hacker attacks are now a regular occurrence, as hostile groups (perhaps sponsored by hostile foreign governments) become more capable. Indeed, the attacks themselves have become much more sophisticated, no longer comprising of brute-force, denial-of-service attacks on servers, but rather intrusions that target specific bank applications and customer access devices.

Technology has also stimulated new levels of competition that might be more than our markets and human capability can handle. The pervasive nature of computerized high-speed trading has reached staggering proportions. The problems that arise when things go wrong (not to mention the potential for market manipulations) can be devastating. We have witnessed "flash crashes" arising from high speed trading unintentionally misdirected by reason of faulty algorithms and/or improper manipulation within the nanosecond bands now opened up by the networks. Flash crashes are now also a much more common occurrence than the public might realize.[15]

In short, our enormous and complex financial institutions are flying fast and high on the very technology that makes modern finance possible but that also simultaneously adds major new vulnerabilities. The risks incurred may well be worthwhile for the overall advancement of humankind, but there is an important new factor: whereas we have been able to withstand individual crashes in the past, the Crisis of 2008 has demonstrated that we cannot easily manage the contagion stemming from the fact that the largest of our institutions are now so tightly interconnected with each other and across financial systems that the failure of any one of them could trigger the collapse of the system as a

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http://www.reuters.com/article/2013/05/18/us-cyber-summit-banks-idUSBRE94G0ZP20130518.

14. Exec. Order No. 13636, Improving Critical Infrastructure Cybersecurity, 78 Fed. Reg. 11739 (Feb. 12, 2013).

15. *See* Eric Hunsader, WIRED BUSINESS CONFERENCE 2013: THINK BIGGER (May 7, 2013), http://fora.tv/2013/05/07/Nanex_CEO_Eric_Hunsader_Flash_Trading_Detective_Work.

whole.

II. CAN REGULATION SAVE THE BANKS?

In enacting the Dodd-Frank Act and promoting international cooperation, Congress, the implementing regulators, and the Basel Committee for Bank Supervision (BCBS) have all pinned their hopes for containing the risks of very big banks on a few major elements: improving the ability to anticipate systemic financial crises; intensifying the regulation of big banks; instituting structural reforms designed to shield depositors and taxpayers from losses when institutions fail; developing better mechanisms for "resolving" large financial institutions when they run into financial difficulty; and extending the safety net for depositors. While these strategies all sound appropriate in theory, achieving their ambitions and implementing them in credible ways without iatrogenic consequences is proving to be massively difficult and divisive. The associated difficulties, as well as a record of numerous earlier failures to take timely action even when regulators were empowered to do so, have all contributed to the general sense of disbelief when politicians and regulators declare that they have put an end to the "too big to fail" problem.

The Financial Stability Oversight Council (FSOC)[16] and its research arm, the Office of Financial Research,[17] have been hard at work producing studies and reports to Congress, some of which have added to our substantive understanding of how financial crises develop. Yet hard decisions have so far been avoided or been very slow in coming. It is difficult to believe that the FSOC framework, consisting of the voting heads of ten different agencies could act quickly or in unison, particularly in times of impending crisis. The FSOC has, for example, taken a long time merely to designate nonbank systemically important financial institutions (SIFIs): three years after the enactment of Dodd-Frank only two have been designated,[18] while the appeal

16. The Financial Stability Oversight Council was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 12 U.S.C. § 5321 (2012).

17. The Office of Financial Research was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 12 U.S.C. § 5342 (2012).

18. On July 8, 2013, the Financial Stability Oversight Council voted to designate two nonbank financial companies as SIFIs: American International Group, *see Basis of the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc.*, TREASURY.GOV (2013), *available at*

process for a third has not yet been completed.[19]

Attempts over the past few years to impose absolute size limits on big banks have foundered. The codependence of the Treasury and the banks themselves is simply too great to break through at this stage, and even if there were stronger support for size restrictions no one has a good answer for what the optimal size should be or whether reducing the size of banks will eliminate the dangers posed by big finance itself.[20] Regulators do indeed appear to be taking their cues from public pressure (or perhaps they are becoming more concerned about what would happen to them in the event of a large failure), and they are reported to be placing great pressure on the big banks to reduce their sizes and not undertake additional acquisitions. It is therefore possible that further increases in scale are becoming practically impossible for big banks.

On the other hand, a groundswell of bipartisan support for applying more rigorous "speed limits of banking," namely capital and liquidity requirements, has been building. Various finance experts have repeatedly emphasized that the historically low and wafer-thin levels of capital banks now hold are simply too small to absorb the shocks inherent in economic volatility. The entire Basel III framework and the Collins Amendment in the Dodd-Frank Act are based on the assumption that banking conglomerates simply have to have much greater loss-absorbency capacity, lower leverage and better quality capital. Many in Congress and elsewhere consider these regulatory reforms to be ineffectual and new bills imposing additional restrictions have been

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http://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis of Final Determination Regarding American International Group, Inc.pdf, and General Electric Capital Corporation, *see Basis of the Financial Stability Oversight Council's Final Determination Regarding General Electric Capital Corporation, Inc.*, TREASURY.GOV (2013), *available at* http://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis of Final Determination Regarding General Electric Capital Corporation, Inc.pdf.

19. *See* Danielle Douglas, *Prudential Enters Unchartered Legal Realm by Appealing its Regulatory Label*, WASH. POST, Jul. 3, 2013, http://www.washingtonpost.com/business/economy/does-prudential-have-a-chance-of-beating-the-systemically-important-label/2013/07/03/9f3f22f8-e3ed-11e2-80eb-3145e2994a55_story.html.

20. The essential difficulty is that it is not *size* alone that creates the problem. Rather, it is the *combination* of size, extreme diversity of risks, multiple points of vulnerability, intense interconnectedness, speed of business, economic pressure on bankers to produce high short-term profits, and other factors that combine to produce the high levels of risk involved with large-scale modern finance. This is why there is no "silver bullet" for solving the problem.

introduced. Even if these movements for reform fail to gain sufficient momentum for passage, the regulators themselves appear to have taken the hint, with the FDIC and even the OCC and the Fed demanding greater capital and stricter liquidity requirements for larger banks.

All major financial centers have toyed with structural reforms designed to separate more volatile risks from the basic business of banking. In the United States, the Volcker Rule attempts to separate banking from proprietary trading. In the United Kingdom, "ringfencing" reforms modeled on the Vickers Report[21] are designed to shield depositor funds from high-risk activities within the banking conglomerate. In Europe, the Liikanen Commission has proposed a slightly different model. Yet such reforms, at least in the United States and probably elsewhere, are problematic: not only are the separations extremely difficult to implement in practice, but efforts to do so are becoming labyrinthine in themselves, not least because the industry's own fierce resistance to any kind of meaningful reform has forced regulators into ever-more-complicated rulemaking exceptions. The convoluted results are themselves generating what one commentator has aptly named "complexity risk."[22]

The industry, fearing more drastic reforms, now relies on the argument that failures will be better handled than before as a result of the new "orderly liquidation authority" introduced by Dodd-Frank.[23] This system involves two elements: first, the production by large financial institutions of blueprints for their dissolution in times of trouble ("living wills"); and second, a receivership regime, being developed by the FDIC and foreign regulators, that would ensure that the consequences of failure could be expeditiously contained both within national financial systems and across borders. Considerable

21. TIMOTHY EDMONDS, THE INDEPENDENT COMMISSION ON BANKING: THE VICKERS REPORT (2013), *available at* http://www.parliament.uk/briefing-papers/SN06171.pdf.

22. Karen Shaw Petrou, *The Complexity-Risk Conundrum: Why SIFIs Can't Be Both Bullet-Proof and Profit-Making*, Remarks Prepared for the Securities Industry & Financial Markets Ass'n., Jan. 10, 2012, http://www.fedfin.com/images/stories/press_center/speeches/SIFMA_Speech.pdf. The Executive Director, Financial Stability of the Bank of England, Andy Haldane, has made a similar point. *See* Andrew G. Haldane, Exec. Dir., Fin. Stability & member of the Fin. Pol'y Comm., Vasileios Maduoros, Economist, Bank of Eng., The Dog and the Frisbee, Speech given at the Federal Reserve Bank of Kansas City's 36th Economic Policy Symposium, "The Changing Policy Landscape," Jackson Hole, Wyoming (Aug. 31, 2012), http://www.bankofengland.co.uk/publications/Pages/speeches/2012/596.aspx.

23. *See* 12 U.S.C. §§ 5381-5394 (2012).

work has been done both domestically and internationally. Large financial institutions, domestic and foreign, have submitted various rounds of living wills. The FDIC and the Bank of England have jointly developed a "single point of entry" system for handling failures by complex financial conglomerates. Yet the goal of a resolution system that might match the complexities associated with failure by any global financial institution remains distant. Even domestically, the FDIC's orderly resolution regime, though tested in various hypothetical scenarios, has not yet been subjected to the fiery furnace of a real failure, and there are many who remain skeptical that the system would hold up.

To add to the morass, depositor guarantees have been hiked dramatically during and since the 2008 Crisis, with retail deposit insurance in the United States more than doubling to the very high level of $250,000 per depositor per insured bank. Wholesale deposits were also, in effect, accorded 100% guarantees through various "transaction guarantee" programs. While intentions were honorable and designed to prevent runs on the banks, the effect has been to generate greater moral hazard than ever before, and thereby only intensifying the massive distortions in the banking system and financial markets as a whole.

In short, efforts to promote financial stability through regulatory techniques are halting, controversial, and might even prove ineffective when financial instability returns, as it inevitably does. Given the history of past and continuing regulatory failures, as well as the enormity of the tasks facing regulators—especially considering cutbacks in funding for agencies and the enormous influence of the industry—it is hard after three full years of trying to find an informed commentator who can say with confidence that we have fixed the vulnerabilities that led to the Crisis of 2008 and that such a crisis will not happen again. The task may simply be too complicated.

III. INCENTIVES, REWARDS, AND MARKET DISCIPLINE

If attempts by regulators to corral the big banks remain unconvincing, perhaps there is still some light on the horizon coming from what, in this commentator's view, remains the ideal source (if it can be allowed to work): market discipline.

Big banks are struggling to sustain their historical performance.

Compensation has declined and long-term expectations relating to returns on equity have been dramatically downgraded. Many bankers blame regulation for this state of affairs. This argument is self-serving and rather implausible given the ratio of regulatory expense to profits and the strong short-term profits banks are still able to generate. Stronger capital and liquidity requirements might have had a negative influence on the short-term outlook, but the overall situation also has a lot more to do with much broader economic conditions and a growing perception that big universal banks simply cannot deliver the returns they originally promised.

The markets themselves are developing explicit reservations. On one hand, the steep discounts to book value that some of the leading big banks now suffer have been explicitly ascribed to their inability to generate value at the same pace as smaller and less-complex counterparts.[24] The CEO of a firm that invests in banks, Joshua Siegel, reportedly explained that, "smaller regional or community banks don't have the complexity that weighs down many of their larger peers, an observation that helps to explain the steep discount to book value, or reported net worth, in effect at Bank of America and Citigroup."[25]

Other prominent analysts, including some who have a powerful influence on the markets such as Mike Mayo and Meredith Whitney, have expressed similar sentiments. Just before this conference, Ms. Whitney bluntly declared that:

> For too long, banks have been viewed by investors as "highly complex institutions" and because of this mystique, bank chief executives and their boards have justified obscene pay packages that ultimately hurt overall shareholder returns. This year will be particularly painful for bosses who try to perpetuate the myth that running a bank is any different than running a

24. *See* Christine Harper, *Bank Investors Press Breakups to Add Value, Burnell Says*, BLOOMBERG, Apr. 11, 2013, http://www.bloomberg.com/news/2013-04-10/bank-investors-press-breakups-to-add-value-burnell-says.html ("So-called universal banks such as Bank of America Corp., Citigroup Inc. and JPMorgan Chase & Co. are trading at a 25 percent to 30 percent discount to more-focused competitors[.]")

25. Quoted by Suzanne Kapner & Shayndi Raice, *Regionals Outplay Big Banks—Latest Earnings Reports Illustrate Benefits of Simpler Businesses*, WALL ST. J., Jan. 18, 2013, at C1.

> widget company. Complex accounting has made banks' financial statements incredibly hard to read. The banks, some with more than 75 pages of earnings details, have done little to simplify results for investors. Making things sound more complicated than they need to be has not served the banks well. . . . For the past 20 years, an American bank has been judged on its ability to get bigger faster than its rivals. Only now will large US banks will find themselves judged by how effectively [sic] they are at getting smaller, leaner and more profitable.[26]

At the same time, market participants are complaining about the incorrigible opacity, so well described by Frank Partnoy and Jesse Eisinger in *The Atlantic*, of bank statements of financial condition.[27] Paul Singer, head of the leading hedge fund Elliott Capital Management, recently had a well-publicized confrontation with one of the greatest titans of finance, Jamie Dimon, during which he (Singer) was told by Dimon that the 400-page 10-Q should be enough for his needs and that he did not need to know how the "engine" worked.[28] But of course, as a hedge fund manager, Mr. Singer *does* need to know how the "engine" works if he is going to manage his own risk properly. *The Financial Times* reported that the opacity of which Mr. Singer complained has "become a common criticism among both hedge fund and institutional investors."[29] What seemed to be not much more than the sheet lightning of a distant but unthreatening storm has now begun to build into investor movements to which big banks must pay attention.[30] Some important regulators and commentators have

26. Meredith Whitney, *US Bank Bosses Must Live Up to Their Pay*, FIN. TIMES, Jan. 31, 2013.

27. Partnoy & Eisinger, *supra* note 1.

28. *See, e.g.*, Heather Stewart, *Jamie Dimon's Defence of Bankers Won't Fly*, GUARDIAN BUS. BLOG (Jan. 23, 2013), http://www.guardian.co.uk/business/blog/2013/jan/23/jamie-dimon-jp-morgan-defence-of-bankers; Tom Braithwaite & Patrick Jenkins, *JPMorgan and Elliott Chiefs Clash in Davos*, FIN. TIMES, Jan. 23, 2013, *available at* http://www.ft.com/intl/cms/s/0/9977e38c-6553-11e2-8b03-00144feab49a.html#axzz2THIECPIY.

29. Tom Braithwaite & Patrick Jenkins, *JPMorgan and Elliott Chiefs Clash in Davos*, FIN. TIMES, Jan. 23, 2013, *available at* http://www.ft.com/intl/cms/s/0/9977e38c-6553-11e2-8b03-00144feab49a.html#axzz2THIECPIY.

30. For my early speculations, *see* Lawrence Baxter, *Has The Great Big-Bank Die-Off*

suggested that component parts of some of the big banks are worth more than their consolidated wholes.[31] Spin-off proposals have been promoted for icons such as Barclays,[32] Citi,[33] and UBS.[34]

These developments are encouraging. Given that expense reductions can preserve returns on equity for only so long, and given that more-focused competitors are producing better returns to investors, it is entirely possible that investor attention will begin to turn from "too-big-to-fail" toward the real problem of "too-big-to-remain-profitable." Breaking up the banks is a proposition far easier said than done; indeed, at this point, we really do not know what "safe" bank sizes should be or what unintended consequences might accompany elimination of the big banks.[35] As investors train their attention on the dysfunctional and unprofitable nature of ultra-large, highly-complex financial institutions, we might not be far from the day when we will witness a decline of such gods of finance as they are forced naturally into breakups by remorseless market pressures (much like the industrial conglomerates of the 1980s).

Were these developments to gain momentum, and assuming no unforeseen disaster beforehand (always a realistic concern), then perhaps the markets will have corrected themselves more safely, smoothly, and efficiently than could have happened in consequence of haphazard and fractious political and regulatory attempts to impose this correction themselves.

Begun?, SEEKING ALPHA, July 11, 2012, http://seekingalpha.com/article/715801-has-the-great-big-bank-die-off-begun.

31. For a convenient summary of the diverse group that are beginning to hold this view, *see* Washingtons Blog, *Big Banks Worth More to Investors Broken Up*, THE BIG PICTURE (Apr. 18, 2013, 1:30 AM), http://www.ritholtz.com/blog/2013/04/big-banks-worth-more-to-investors-broken-up/.

32. *See, e.g.*, Patrick Jenkins & David Oakley, *Investors Urge Jenkins to Split Barclays*, FIN. TIMES, Nov. 25, 2012, *available at* http://www.ft.com/intl/cms/s/0/efae0c36-35a6-11e2-bf64-00144feabdc0.html#axzz2DKoGDW5e.

33. *See, e.g.*, Aaron Elstein, *In the Markets: Citi's Parts Worth More than Whole*, CRAIN'S N.Y. BUS., Jul. 29, 2012, http://www.crainsnewyork.com/article/20120729/SUB/307299972http://www.crainsnewyork.com/article/20120729/SUB/307299972.

34. *See, e.g.*, Ambereen Choudhury, *UBS Should Split Investment Bank, Shareholder Knight Vinke Says*, BLOOMBERG, May 2, 2013, http://www.bloomberg.com/news/2013-05-02/ubs-should-split-investment-bank-shareholder-knight-vinke-says.html; Elena Logutenkova, *UBS Looks at All Investor Input on Knight Vinke Proposal*, BLOOMBERG, May 3, 2013, http://www.bloomberg.com/news/2013-05-03/ubs-looks-at-all-investor-input-on-knight-vinke-proposal.html.

35. *See* text accompanying note 20 *supra*.

Thus might safely set the sun on the era of the giant universal banks.